APPENDIX A

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

State of North Dakota	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 81-05-082
	)	
Ralph H. Glevin,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

The defendant has moved to suppress evidence obtained from his wallet. The State resists. The evidence was seized without a warrant, and the State accordingly acknowleges that the burden rests with it to establish that the search and seizure was justified on the basis of a recognized exception to the warrant requirement.

The prosecution states that the facts are as set forth in the defendant's brief in support of his motion and as supplmented by testimony at the suppression hearing.

It appears that during the early evening hours of Apr. 2, 1981, a police officer received a telephone call regarding an incident at an apartment dwelling in Bismarck. When the officer entered the apartment, he noticed the tenant of the apartment (Mrs. Hart) lying on the floor in an apparent semiconscious condition. He also noticed the defendant lying on the floor of the kitchen in a similar condition. The officer was informed that Mr. Gelvin, who is known by Mrs.

Hart, had entered her apartment uninvited and had exhibited bizarre behavior, and refused to leave, and had in general acted "weird." She further informed the officer that Mr. Gelvin had made some statement to the effect that he was under the influence of "acid" and had waved something in the air which he claimed was LSD, which the officer was told was in his wallet. He was also told that Mr. Gelvin had assaulted her and had pulled the telephone off the wall.

The officer neither arrested nor searched Mr. Gelvin at the scene but did take him into custody and transported him to the Burleigh County Jail for purposes of detoxification. Intoxication is not an offense in this state, but officers are authorized to take intoxicated persons into custody for their own protection.

At the jail the defendant's belongings were taken from him, and an inventory was made. During the inventory process the officer opened the defendant's double-fold wallet and saw a piece of paper lying loosely therein with a picture of the cartoon character "Goofy" printed thereon. The officer testified that he had learned from his experience and training that this is a common method of carrying LSD. The paper was taken from the wallet, analyzed, and found to contain LSD.

The purpose of taking inventory is three fold: (1) to take from the incarcerated person anything with which he might harm himself or others or attempt to escape; (2) to prevent the introduction of contraband into the jail; and (3) to protect the officers incarcerating the defendant against claims of theft or other misuse of the defendant's property. Standard practice in conducting the inventory at the Burleigh County Jail includes not only removing the objects from the defendant for safekeeping but inventorying the contents of any

closed objects, such as a wallet. In the case of a wallet, in other words, the pockets are all examined, the money counted, etc. The police officer did testify that part of his motivation in examining the interior of the wallet was to look for the paper, but, in view of the general practise, that fact is irrelevant in determining whether the examination was justified.

While the officer was at the apartment, he had accumulated sufficient information to justify him in concluding that probable cause existed for believing the defendant was in possession of LSD, which is a felony; therefore, it exigent circumstances existed, he would have had the right to search the defendant for the substance. The fact that he chose to take the defendant into custody and defer such a search would not alter that proposition. There is a dictum in the case of State v Gagnon, 207 N.W.2d 260 (N.D. 1973), which can be read to mean that if exigent circumstances do not exist at the time the search occurs, a warrant is necessary.

Subsequent developing case law, however, clearly establishes that this is not the law. The law is that if there exists the right to search without a warrant due to exigent circumstances, the right to search does not cease simply because the officer chooses to defer that process until a time when the exigency has passed. See Bailey v. State, 294 A.2d 123, 134-37 (Md. App. 1972), which contains an excellent discussion of this subject. See also: King and Mobley v. State, 298 A.2d 446 (Md. App. 1973); State v. Meadows, 260 N.W.2d 308 (N.D. 1977); State v. Binns, 194 N.W.2d 756 (N.D. 1972).

State v. Gagnon, supra, held that evidence was properly suppressed because there was neither probable cause for arrest nor probable cause for seizing the vehicle. The discus-

sion regarding the fact that exigency no longer existed at the time of the search was a dictum.

> Gratuitous remarks should not be made in opinions by this court. They are dicta, and when they creep in, deserve to be ignored.
>
> Boedecker v. St. Alexius Hospital, 298 N.W.2d 372 (N.D. 1980).

I heed this admonition.

The question present is whether at the time probable cause developed there were exigent circumstances which would have justified an immediate warrantless search of the defendant for the LSD.

Normally, whether we are talking about a movable automobile or a movable person, exigent circumstances exist, because the car or the defendant will be gone or will have had the opportunity to destroy the evidence before a warrant can be obtained. The present situation, however, is unusual. The record is not clear as to the exact condition of the defendant, nor is it clear how he was taken to the jail. He was apparently semiconscious, and, since he was acting irrationally, it may well be that the officer handcuffed him. I do not know this. The record does not disclose the particular circumstances.

An important element in considering this matter is the conduct of the officer himself. Once can infer that he did not believe exigent circumstances existed necessitating the immediate search, as he made no effort to search. The defendant was under the control of the officer, and it may well be that the situation was such that the defendant had no opportunity to destroy the evidence. As noted, I do not know this, but neither do I know that the defendant was in a position to destroy the evidence. The burden rests with the State to

establish that such a circumstance necessitated an immediate search, and the State has not established that. Perhaps it could have done so; nevertheless, it has not. I conclude that the record does not permit a finding that exigent circumstances existed which justified a warrantless search, even though probable cause existed to make such a search.

With respect to the inventory, courts have generally recognized that removing the defendant's possessions from him and inventorying them when he is taken into custody are a legitimate practice. The case law is still developing, however, on the precise scope of this process. In this case, for example, the defendant concedes that removing the wallet for safekeeping was legitimate but argues that opening it and examining its contents was not.

There are competing interests here. The interests of the State have already been noted, against which we are balancing the defendant's right of privacy. The conflicting interests should be harmonized, insofar as possible, which is to say that the right of the State to intrude upon the defendant's right of privacy should extend no further than is necessary to protect the State's interests. In this connection, I agree basically with the approach taken by the Alaska Supreme Court in Reeves v. State, 599 P.2d 727 (Al. 1979), wherein the Court states:

> The search of an arrestee's person should be no more extensive than reasonably necessary to prevent the entry of weapons, illegal drugs, and other contraband or potentially dangerous items into the jail. Any items taken from the arrestee's possession in this search may not be further searched except pursuant to a search warrant or another recognized exception to the warrant requirement applicable in the circumstances. Finally, the inventory conducted shall consist of cataloging of

> the arrestee's property thus seized and may not, without a specific request from the arrestee, extend to a search and inventory of the contents of any object, closed or sealed container, luggage, briefcase, or package . . . . [emphasis added]

Reeves v. State, supra, at 737.

Although I agree fundamentally with the foregoing stated proposition, I think it is in some respects too broad. For example, circumstances may exist whereby the police have articulated reasons for suspecting a closed object may contain a bomb or a loaded weapon. In such a situation, the police may open the object if this is necessary to determine whether such is the case. This would be permissible even though the sealed object had not been taken with the arrestee into custody, because the necessity for protection of persons within the jail exists regardless of where the object is kept.

The refinement just mentioned, however, does not apply in the instant case, because, even though the officer did have an articulated reason for believing the wallet contained contraband and may indeed have had probable cause for such a belief, the wallet, along with the suspected contraband it contained, was being removed from the defendant and placed in safekeeping. There is no showing that the question of the existence of probable cause could not have been submitted to a neutral magistrate during the period the defendant and his wallet were being held in custody.

The Alaska opinion does not address the situation in which the person, because of intoxication or other mental incapacity, is unable to make a specific request. In such circumstances, however, the officers are subject to later claim regardless of the extent of the inventory, since the person incarcerated will be in a position to claim he hadn't known what he was signing. Hence, there is no purpose for a

particularized inventory. There is also the possibility that someone, other than the booking officer, could later abscond with the person's possessions, and a complete inventory would at least protect the intake officer from this kind of event. Again, however, needs must be balanced. The possibility is not justification to invade the privacy of a detainee for the purpose of protecting an officer against the possible impropriety of a fellow officer.

In this case the officer also testified that he was also looking for identification when he opened the wallet. The necessity of obtaining identification may well constitute an articulated reason for opening a wallet.

The problem in this case is that the record does not establish the need to search in order to obtain identification. The detainee had already been identified by others, and, if something more were needed, there is no showing it could not have been obtained from the detainee. There could have been a request to see his driver's license, just as in the case of an officer stopping a traffic code violator. In the latter situation, there is a need for identification, but the officer does not rummage through the detainee's wallet. He requests and obtains identification from the detainee, partly, it might be added, for the purpose of avoiding a claim of theft.

I conclude that the prosecution in this case has failed to demonstrate a need for searching the defendant's wallet or making an inventory of its contents.

The motion to suppress evidence is, therefore, granted.

Signed at Bismarck, North Dakota, August 11, 1981.

BY THE COURT:

Gerald G. Glaser, District Judge

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

The State of North Dakota,

Plaintiff and Appellant

v.

Ralph H. Gelvin, Defendant and Appellee

Criminal No. 793

Appeal from the District Court of Burleigh County, South Central Judicial District, the Honorable Gerald G. Glaser, Judge.

REVERSED.

Opinion of the Court by Paulson, Justice.

Gail Hagerty, Assistant State's Attorney, Courthouse, Box 1901, Bismarck, for plaintiff and appellant.

Robert J. Snyder, P.O. Box 2071, Bismarck, for defendant and appellee.

PAULSON, Justice.

The State appeals from a memorandum opinion of the District Court of Burleigh County dated August 11, 1981, which suppressed certain evidence.[1] We reverse.

During the early evening hours of April 2, 1981, Officer Cliff Emmert of the Bismarck Police Department was dispatched to investigate an incident at the apartment of Mrs. Shirley Hart in south Bismarck. Upon arriving at the

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[1]We note that the State has appealed from the district court's memorandum opinion. Although the parties to this action did not raise the issue of the appealability of a memorandum opinion, it is the duty of this court to dismiss the appeal on our own motion if we conclude that it is not appealable. Chas. F. Ellis Agency, Inc. v. Berg, 214 N.W.2d 507, 509 (N.D. 1974).

We have previously held in civil cases that a memorandum decision is generally not appealable. Chas. F. Ellis Agency, Inc. v. Berg, supra 214 N.W.2d at 510; Nord v. Koppang, 131 N.W.2d 617, 618 (N.D. 1964); Karabensh v. Grant, 73 N.W.2d 782, 783 (N.D. 1955). However, when the memorandum opinion contains an order which was intended to be a final order and the order is one from which an appeal may be taken pursuant to statute, we will treat the appeal as an appeal from the order. Bond v. Busch, 313 N.W.2d 704, 705 n.2 (N.D. 1981); Hospital Services, Inc. v. Dumas, 297 N.W.2d 320, 320-321 n.1 (N.D. 1980).

We believe the same standard should apply in criminal cases. We stated in State v. Jelliff, 251 N.W.2d 1, 4 (N.D. 1977), that "statutes conferring the right to appeal must be liberally construed, and that in determining appealability it is not the label which controls but, rather, the effect". Although in the instant case the district court issued a memorandum opinion granting the defendant's motion to supress evidence, it is clear from the circumstances that the court intended the memorandum opinion to have the effect of a final order. Under these circumstances, we will treat the appeal as an appeal from the order contained in the memorandum opinion.

apartment, Officer Emmert found Mrs. Hart on the floor in the hallway of her apartment in a semiconscious condition. He also observed the defendant, Ralph H. Gelvin, lying unconscious on the floor in the kitchen of the apartment. Mrs Hart told Officer Emmert that Gelvin had come to her apartment uninvited and had been acting very strangely. Mrs. Hart further stated that Gelvin claimed to be on drugs and had waved in the air a small piece of paper, claiming that it was LSD [lysergic acid diethylamide]. Gelvin had refused to leave and Mrs. Hart attempted to telephone the police, but Gelvin assaulted her and tore her telephone off the wall.

Officer Emmert took Gelvin into custody and transported him to the Burleigh County Jail for detoxification. At the jail, Gelvin's belongings were taken from him and an inventory conducted. During this inventory of Gelvin's belongings, Officer Emmert opened Gelvin's wallet. Lying loose between the folds of the wallet was a small piece of paper with a cartoon design on it. Officer Emmert, believing the paper to be "blotter acid", LSD, sealed it in an envelope and placed it in an evidence locker. Subsequent testing at the Crime Laboratory Division of the State Laboratories Department indicated that the paper did indeed contain LSD.

On April 27, 1981, Gelvin was charged with possession of a controlled substance. Gelvin filed a motion to suppress the evidence of LSD which was discovered during the inventory of his belongings at the Burleigh County Jail, and the district court granted Gelvin's motion to suppress in a memorandum opinion dated August 11, 1981.

The sole issue raised on this appeal is whether or not the district court erred in suppressing evidence seized from the defendant's wallet during an inventory conducted when the

defendant was taken into custody for detoxification.

Initially, we note that Gelvin was brought to the Burleigh County Jail for detoxification; he had not been placed under arrest at the time his possessions were inventoried at the jail. Therefore, the search in this case cannot be justified as a search incident to an arrest.

The State contends that the examination of the contents of Gelvin's wallet was a routine inventory search conducted pursuant to standard jail procedure. In South Dakota v. Opperman, 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976), the United States Supreme Court upheld a routine inventory search of an impounded automobile. Various other courts have extended the rationale of Opperman to routine inventory searches of the articles possessed by a person lawfully taken into custody. See, e.g., United States v. Bloomfield, 594 F.2d 1200, 1201-1202 (8th Cir. 1979); Sumlin v. State, 266 Ark. 709, 587 S.W.2d 571, 577 (1979); Dearing v. State, 393 N.E.2d 167, 171 (Ind. 1979). As noted by the Supreme Court of Indiana in Dearing v. State, supra 393 N.E.2d at 171:

> "Our analysis of this issue begins with the case of South Dakota v. Opperman, 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000. The issue there before the United States Supreme Court was the propriety of an inventory of an automobile; however, an examination of Justice Burger's majority opinion reveals general guidelines to determine the constitutionality of any

type of inventory. The Court, in finding a distinction between searches pursuant to criminal investigations and 'noncriminal' inventories, noted that the making of inventories is not governed by the 'probable cause' concept, nor is a warrant required. Rather, the test of the consitutionality of an inventory is whether, under all the circumstances, the intrusion was reasonable."

Three interests have been advanced in support of inventory searches: (1) protection of the detainee's property while it remains in police custody; (2) protection of the police against claims and disputes over lost or stolen property; (3) protection of the police from danger. South Dakota v. Opperman, supra 428 U.S. at 369, 96 S.Ct. at 3097, 49 L.Ed.2d at . Although courts have generally recognized that those interests require that a detainee's possessions be removed from him and inventoried when he is taken into custody, these courts have expressed widely divergent views regarding the proper scope of the inventory process. Cases involving the inventorying of the contents of closed containers have proved especially difficult.

Some courts faced with this issue have held that a closed or locked container should be inventoried as a unit without searching its contents, while other courts have held that the contents of closed or locked containers must be inventoried to protect the three interests delineated above. Courts have generally employed a balancing test, weighing the detainee's right to privacy in the contents of the container against the State's interest in protecting the three interests listed above: protection of the detainee's property, protection of officers from frivolous claims, and protection of officers from danger.

We note that most of the "closed container inventory search" cases have involved luggage, briefcases, and

purses[2]. Although we express no opinion as to the propriety of conducting inventory searches of closed or locked containers in general, we hold that it was proper for the officers in this case to inventory the contents of Gelvin's wallet.

We have discovered numerous cases in which courts have held that it is permissible to inventory the contents of a detainee's wallet when done pursuant to established police procedures. United States v. Mathews, 615 F.2d 1279, 1286 (10th Cir. 1980); United States v. Gallop, 606 F.2d 836, 839 (9th Cir. 1979); United States v. Jenkins, 496 F.2d 57, 73 (2d Cir. 1974), cert. denied, 420 U.S. 925, 95 S.Ct. 1119, 43 L.Ed.2d 394 (1975); United States v. Gardner, 480 F.2d 929, 931 (10th Cir.), cert. denied, 414 U.S. 977, 94 S.Ct. 297, 38 L.Ed.2d 220 (1973); State v. Mordeszewski, 68 Wis.2d 649, 229 N.W.2d 642, 647-649 (1975). Gelvin has failed to cite any case which holds that an inventory of the contents of a detainee's wallet is

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[2]See, e.g., United States v. Monclavo-Cruz, 662 F.2d 1285 (9th Cir. 1981) [purse]; United States v. Bloomfield, 594 F.2d 1200 (8th Cir. 1979) [knapsack]; United States v. Schleis, 582 F.2d 1166 (8th Cir. 1978) [locked briefcase]; Sumlin v. State, 266 Ark. 709, 587 S.W.2d 571 (1979) [purse]; Parris v. State, 270 Ark. 269, 604 S.W.2d 582 (Ct.App. 1980) [purse]; Delatte v. State, 384 So.2d 245 (Fla.App. 1980) [travel bag]; Dearing v. State, 393 N.E.2d 167 (Ind. 1979) [suitcase]; Bradford v. State, 401 N.E.2d 77 (Ind.App. 1980) [purse]; People v. Miller, 312 N.W.2d 225 (Mich. App. 1981) [briefcase]; People v. Merchant, 86 Mich.App. 355, 272 N.W.2d 656 (1978) [briefcase]; State v. Prober, 98 Wis.2d 245, 297 N.W. 2d 1 (1980 [purse]; State v. McDougal, 68 Wis.2d 399, 228 N.W.2d 671 (1975) [locked suitcases].

constitutionally impermissible.[3]

Gelvin argues that the State's interests could have been served equally well in this case if his wallet had merely been taped shut, without inventorying its contents, and listed on the inventory as "one wallet and contents". We do not agree. In order to fully protect the State's interest in shielding its officers from frivolous claims or disputes over lost or stolen property, and to fully protect the detainee's property while it remains in police custody, it was necessary

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[3]We note that the case most heavily relied upon by Gelvin in his brief, and the only case cited by the district court to support its conclusion on this issue, is Reeves v. State, 599 P.2d 727 (Alaska 1979), a case involving a search of the contents of a balloon found on the defendant's person when he was being booked into jail. A careful reading of Reeves, supra, however, reveals that the case was decided entirely upon state constitutional grounds. The court specifically noted that "It is not at all certain that the fourth amendment to the United States Constitution, as presently construed, places any significant limitations on the scope of an inventory search conducted pursuant to a custodial arrest". Id. at 734. The court went on to note that it was therefore considering the scope of the inventory within the framework of its broader state constitutional guarantees, in Reeves, supra 599 P.2d at 734-735:

> "As we have frequently noted, the Alaska constitutional guarantee against unreasonable searches and seizures is broader in scope than fourth amendment guarantees under the United States Constitution, at least in part because of the more extensive right of privacy guaranteed Alaskan citizens by article I, section 22 of our state constitution. Thus, it is within the framework of Alaska's constitutional guarantees that we must analyze and delineate the permissible scope of pre-incarceration inventory searches in order to determine the validity of the search of Reeves' person undertaken at the Anchorage jail following his arrest."

Article I, section 22 of the Constitution of Alaska provides:

> "Section 22. Right of Privacy. The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section."

to inventory the contents of the wallet. As noted by the Court of Appeals of Michigan in People v. Walker, 58 Mich.App. 519, 228 N.W.2d 443, 446 (1975): "It would be naive and pointless to assume that law enforcement officials may store an arrestee's personal effects without first determining what it is they are inventorying." We also agree with the language of Justice Hansen of the Supreme Court of Wisconsin in his dissent in State v. McDougal, 68 Wis.2d 399, 228 N.W.2d 671, 679 (1975):

> "For the court-specified purpose of protecting against future claims of impounded property being missing, such inventorying goes to contents, as well as container. To list, '1 purse' or '1 pocketbook' would provide no protection at all to the police against a claim that $100 or $1,000 was later missing from purse or pocketbook."

We also note that the United States Court of Appeals for the Eighth Circuit, which had previously held that it was impermissible to inventory the contents of a locked briefcase in United States v. Schleis, 582 F.2d 1166, 1172-1173 (8th Cir. 1978), has since somewhat limited its holding in that case. In United States v. Bloomfield, 594 F.2d 1200, 1203 (8th Cir. 1979), the court held that an inventory of the defendant's knapsack was impermissible, but indicated that its holding did not apply to situations where the container was not "securely closed":

> "In conclusion, we note that our holding that knapsack should have been inventoried as a unit rather than opened and itemized is confined to the facts before us. If a container which is to be inventoried is not securely closed so that the articles within could possible fall out, it may be wiser for police to itemize the articles. See United States v. Neumann, 585 F.2d 355 (8th Cir.

1978). And, if police have some reason to believe a container which is to be inventoried holds instrumentalities which could be dangerous even when sitting idly in the police locker, the police may, and should, inventory the contents of the container."

A wallet is a container which generally is not securely closed, so that articles within could possible fall out; therefore, it is wiser for police to itemize the contents of a wallet when conducting a routine inventory search.

We further conclude that a different result is not required merely because Gelvin was taken into custody for detoxification and had not been arrested at the time his possessions were inventoried. Inventory searches have been upheld, not because of their relationship to an arrest, but because of their relationship to legitimate jail custodial purposes. As noted by the United States Court of Appeals for the Ninth Circuit in United States v. Gallop, supra 606 F.2d at 839:

> "The next question in the case at bar, and one not without difficulty, is whether the reason for the officers' taking Connors into custody should alter this federal constitutional analysis. Wash.Rev.CodeAnn. §70.96A.120 (2) specifies that persons taken into protecuve custody thereunder are not arrested, and are not charged with crime. We find no substantial basis for holding that the reasons for a police inventory which were outlined in South Dakota v. Opperman, supra, do not apply to property taken under police protection when the owner of the property is 'detained' under police custody but not 'arrested'. Under Fourth Amendment standards, the inventory in this case was reasonable; the articles discovered thereby were not tainted with federal illegality.

We conclude that the policy considerations which justify

routine jailhouse inventory searches of arrestees are equally applicable when a person is brought into the jail for detoxification.

Gelvin also contends that the search in this case was not an inventory search at all, but, rather, was a "pretext" search conducted to discover evidence of a crime. Although Officer Emmert had a suspicion that Gelvin was in possession of drugs, this certainly did not mean that he could not inventory Gelvin's possessions prior to placing him in jail for detoxification. Gelvin does not argue that it was improper for Officer Emmert to bring him to the jail for detoxification. The evidence overwhelmingly indicates that Gelvin was extremely intoxicated, that he had been unconscious for a time, and that he had acted in a violent manner. Under these circumstances, Officer Emmert was certainly justified in concluding that Gelvin should be taken to jail for detoxification.

There is also ample evidence indicating that the inventory search of Gelvin's possessions was conducted pursuant to standard jailhouse procedures. Keene Just, a Burleigh County Deputy Sheriff assigned to the Burleigh County Jail, testified that it was standard procedure to inventory the possessions of person brought into the jail for detoxification, including the contents of wallets. We conclude that mere suspicion that contraband or evidence will be found will not invalidate an otherwise valid inventory search conducted pursuant to standard jailhouse procedure. United States v. Ducker, 491 F.2d 1190, 1192 (5th Cir.1974); Mooney v. State, 243 Ga. 373, 254 S.E.2d 337, 338, cert. denied, 444 U.S. 886, 100 S.Ct. 179, 62 L.Ed.2d 116 (1979).

Finally, Gelvin contends that, even if the inventory search of his wallet were permissible, the seizure of the piece of paper and subsequent chemical testing was impermissible. The basis for Gelvin's argument is his contention that

an officer who discovers a small piece of paper with a picture of the cartoon character "Goofy" on it is not justified in believing that the paper contains a controlled substance. Gelvin specifically points to Officer Emmert's testimony that a chemical test was necessary to determine whether or not the paper actually contained a controlled substance.

We do not believe that it is necessary for an officer to be certain beyond a doubt that a substance is contraband before he may seize it and submit it for testing. The seizure of property by an officer who lawfully views it is permissible if there is "probable cause to associate the property with criminal activity". Payton v. New York, 445 U.S. 573, 587, 100 S.Ct. 1371, 1380, 63 L.Ed.2d 639, 651 (1980).

The facts in this case clearly establish that Officer Emmert had probable cause to believe that the paper found in Gelvin's wallet contained a controlled substance. Officer Emmert had previously been informed by Mrs. Hart that Gelvin had shown her a small piece of paper which Gelvin claimed contained LSD. Officer Emmert also testified that he had been shown similiar pieces of paper with the same design at a drug seminar, and had been informed that they contained "blotter acid", or LSD.[4] Under these

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[4]Officer Emmert testified, in relevant part, as follows:

"Q What did you do then with the small square of paper?

"A I sealed it up in an envelope and turned it in for evidence.

"Q Had you even seen anything similar to that piece of paper during the course of your training or experience as a law enforcement officer?

"A Yes, I have. In training, in a drug seminar, I was shown similar pieces of paper with the same design on it.

"Q What were you told those were?

"A That they were blotter acid — LSD."

circumstances, we believe that Officer Emmert had probable cause to believe that the piece of paper found in Gelvin's wallet contained a controlled substance. Officer Emmert was therefore justified in seizing the paper and submitting it for chemical testing.

The order of the District Court of Burleigh County suppressing evidence removed from Gelvin's wallet at the Burleigh County Jail is reversed.

April 29, 1982

Mr. Robert J. Snyder
BICKLE, COLES & SNYDER
Attorneys at Law
P.O. Box 2071
Bismarck, ND 58502

Re: State v. Gelvin
Cr. 793

Dear Mr. Snyder:

The Supreme Court has today entered an order denying the petition for rehearing in this case.

In accordance with Rule 41(a), NDRAppP, the mandate of the Supreme Court will be forwarded to the Clerk of the District Court after the expiration of seven days.

Sincerely yours,

Luella Dunn
Clerk of the Supreme Court

LD:cf
cc: Ms. Gail Hagerty, Assistant States Attorney

CERTIFICATE OF SERVICE

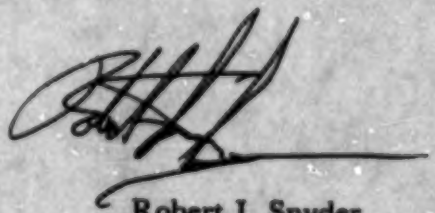
The foregoing Petition for a Writ of Certiorari and Appendix to the Petition for a Writ of Certiorari was served by mailing a true and correct copy thereof to:

(3 copies)
Gail Hagerty
Attorney at Law
P.O. Box 1901
Bismarck, North Dakota
58502

(1 copy)
Luella Dunn, Clerk
Supreme Court
State Capitol
Bismack, North Dakota
58505

(40 copies)
Alexander L. Stevas, Clerk
U.S. Supreme Court
Supreme Court Building
Washington, DC 20543

the same having been placed in the United States Mail with sufficient postage affixed, this 2nd day of June, 1982.



Robert J. Snyder